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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,977	09/09/2003	Allan Todd Berry	40,730	1304

7590 03/13/2006
Joseph G. Mitchell, Esq.
4521 Derby Lane
Smyrna, GA 30082

EXAMINER

PARSLEY, DAVID J

ART UNIT PAPER NUMBER

3643

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,977

Applicant(s)

BERRY, ALLAN TODD

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 1-17-06 and this action is final.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 24 and 25 both recite the limitation "at least two shackles" in line 12 of claim 24 and in line 11 of claim 25. There is insufficient antecedent basis for this limitation in these claims. Both of claims 24 and 25 disclose a shackle for the bird and a shackle for the feet of the bird and it is unclear to whether the shackle for the bird and the shackle of the feet are the same shackle or are different respective shackles and therefore there is a lack of antecedent basis regarding the plurality of shackles as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-25 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0139130 to Steffler et al. in view of U.S. Patent No. 4,150,374 to Brook in view of U.S. Patent Application Publication No. 2003/0065414 to van den Nieuwelaar et al. in view of DE Patent No. 4132830.

Steffler et al. discloses an apparatus/method to electronically automate the sorting of chicken feet in the category of edible or inedible, comprising, a sensing means – at 52-56 and/or 62-64 and/or 70-72, for tracking the chicken feet and the associated processed chicken, a programmable means – at 58 comprising a programmable logic card – see for example paragraphs [0040]-[0044], to track and store information received by the programmable means, and a communication means (inherent) between the sensing means and the programmable means – see for example paragraphs [0033]-[0051]. Steffler et al. further discloses the sensing means comprises at least one photoelectric sensor – at 62 – see for example paragraph [0051] and at least one other sensor – at 52-56, 64 or 70-72. Steffler et al. does not disclose at least one inductive sensor. Brook does disclose at least one inductive sensor – at 15 – see for example column 3 lines 10-17. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. and add the sensing means with at least one inductive sensor of

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Brook, so as to allow for the location of the trolleys to be automatically determined by the device. Steffler et al. as modified by Brook does not disclose the programmable means receives reject information from an inspector reject button and compares the reject information to the information received from the sensing means. van den Nieuwelaar et al. does disclose the programmable means – at 12, receives reject information from an inspector reject button – at 16, and compares the reject information to the information received from the sensing means – at 8a-8e – see for example paragraph [0081]. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and add the programmable means receiving information from the inspector reject button of van den Nieuwelaar et al., so as to allow for data on each animal/carcass to be stored for reference or later use. Steffler et al. as modified by Brook and van den Nieuwelaar et al. does not disclose a flag attached to a shackle. The German patent does disclose a flag – at 50,60-64, see the English abstract attached to the shackle – at 60 see for example figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Steffler et al. as modified by Brook and van den Nieuwelaar et al., and add the flag attached to the shackle of the German patent so as to allow for the shackle and the carcass carried by the shackle to be identified as they are conveyed along the processing line.

Response to Amendment

4. The affidavit under 37 CFR 1.132 filed 1-20-05 is insufficient to overcome the rejection of claims 24-25 based upon the Steffler et al. reference in view of the Brook, van den Nieuwelaar

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et al. reference and the Linville reference as set forth in the last Office action because: of the response to the affidavit found in paragraph 3 of the office action dated 4-6-05.

The affidavit under 37 CFR 1.132 filed 8-2-05 is insufficient to overcome the rejection of claims 24-25 based upon the Steffler et al. reference in view of the Brook, van den Nieuwelaar et al. reference and the Linville reference as set forth in the last Office action because: commercial success does not have a correlation to the claimed invention being novel or non-obvious over the prior art of record.

The affidavit under 37 CFR 1.132 filed 1-4-06 is insufficient to overcome the rejection of claims 24-25 based upon the Steffler et al. reference in view of the Brook, van den Nieuwelaar et al. reference and the Linville reference as set forth in the last Office action because: it based on the opinion of the inventor and not statements of fact which can be relied upon to overcome the prior art rejections.

Response to Arguments

5. Applicant's arguments with respect to the prior art rejections to claims 24-25 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

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6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

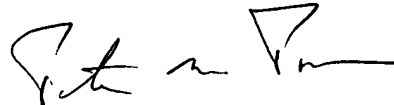
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

3/7/06